HON'BLE SRI JUSTICE D. APPA RAO

WRIT PETITION NO. 23251 OF 2000

Between:

A.V.M. High School, Rajendranagar.

...

Petitioner

AND

1.The District Educational Officer, Ranga Reddy District at Hyderabad and others.

....Respondents

HON'BLE SRI JUSTICE D. APPARAO

WRIT PETITION .NO. 23251 OF 2000

ORAL ORDER:

Petitioner, who is a Correspondent of a partly aided high school, files this Writ Petition, questioning the order dated 17.11.2000 and seeking a writ of Mandamus for setting aside the said order as illegal and unjust, more so, in the light of the earlier judgment in W.P.No. 23207 of 1998 dated 24.11.1999.

2. The petitioner is partly aided high school. It is having Primary and Upper-Primary Classes. The management requested for two posts in the category of Secondary Grade Basic Teacher (SGBT) to be admitted to grant-in-aid. The Government by virtue of G.O.Ms.No. 441 Education (Education (PS.2) Department dated 23.11.1994 admitted certain posts of SGBT to grant-in-aid from 1.11.1994 subject to the conditions that the school must have been established prior to 01.9.1985 and that the persons, who are admitted to these posts, are fully qualified to hold the said post.

3. Admittedly, the school was started long prior to 1985. It is the case of the petitioner that it has sent proposals to the District Educational Officer, first respondent herein, on 28.1.1998. He rejected the same on the ground that Sri M.A.Rahman Osman, SGBT Teacher in Mathematics is qualified in Urdu Medium and was not eligible for SGBT Telugu Medium post. When the said proceedings were questioned in W.P.No. 23207 of 1998, the learned Judge by his order dated 24.11.1999 observed that the G.O or the rules do not prohibit SGBT qualified teacher

without Telugu at the SSC level for being appointed for SGBT post in a school which conducts instructions in Telugu Medium. On the said premise, the said impugned order was set aside and the first respondent was directed to re-consider the entire issue with reference to the G.O.Ms.No. 441 dated 23.11.1994 and pass appropriate orders. In pursuance of the order, the first respondent passed the following impugned order:

> "After careful re-examine the proposals it is not feasible to consider the absorption of appointment of Sri M.A. Raheem Osmani in SGBT Grant-in-aid as he has not studied Telugu subject at any level and the orders issued in proceedings 1st cited is holds good.
> Hence the proposals of absorption of Sri M.A.Raheem Osmani, SGBT Assistant. Grant-in-aid (Telugu Medium) post is rejected."

4. Aggrieved by the said order, the petitioner again came up with this Writ Petition questioning the validity of the order.

5. A perusal of the order shows that it was passed without assigning any reasons, except reiterating the original order that was passed which was subsequently set aside by the learned Judge in the above said petition. Though the direction was to dispose of within four weeks, the first respondent had taken one year to pass an order. The said order is also laconic in the sense no reasons whatsoever were assigned.

6. Heard the learned counsel for the petitioner and the learned Government Pleader for School Education, appearing for the respondents.

7. The fact that the petitioner is partly aided school is not in

dispute. It is also not in dispute that they sought two posts to be admitted to grant-in-aid. When the proposals sent to the then District Educational Officer, in regard to posts of SGBT (Mathematics) was mooted, the same was rejected solely on the ground that he did not study Telugu subject at any level. In spite of the fact that the learned Judge held that G.O. or rules do not prohibit such an appointment. Unfortunately, the first respondent did not take care to see the G.O. or rules. Still more unfortunate is the observation that the earlier order 'hold good'. He could not have stated so when the said order was set aside in the W.P. No. 23207 of 1998. He ought to have referred to the exact rule which prohibit SGBT qualified teacher, without Telugu at the SSC level from being appointed to the SGBT post in a school, which conducts the instruction in Telugu Medium. At any rate, the first respondent could not have passed the very same order which was set aside. This order cannot be justified on any ground whatsoever, as it was against the very G.O. that was issued.

8. The learned Government Pleader appearing for the respondents contended that there is a right of appeal to the first respondent under Sub-Section (1) of Section 81 of the Education Act, 1982 and therefore, the Writ Petition is not maintainable.

9. In fact, this contention was earlier raised and considered. It was held that the availability of an alternative relief is not a strict rule, but a rule of prudence. I reiterate the very same proposition. When the learned Judge directed the first respondent to re-consider the issue afresh, the first respondent could not have reiterated his earlier order without giving

substantial reasons for rejecting the request. Necessarily, this order is liable to be struck down. However, in view of the fact that the first respondent has to re-consider the issue, I direct the first respondent to consider the proposals of the petitioner for appointing Sri M.A.Rahman Osman to SGBT Post (Mathematics). The petitioner is also permitted to file a representation within two weeks, bringing all these facts to the notice of the first respondent and the first respondent herein is directed to consider the entire issue with reference to G.O.Ms.No. 441 dated 23.11.1994 and pass appropriate orders within four weeks from today.

10. In the result, the Writ Petition is disposed of with the above direction. The interim order shall continue till the disposal of the representation by the first respondent.

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D. APPARAO , J

Dated: 26.7.2006
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